

1 XAVIER BECERRA
Attorney General of California
2 ANGELA SIERRA
Senior Assistant Attorney General
3 SATOSHI YANAI
Supervising Deputy Attorney General
4 LISA C. EHRLICH
Deputy Attorney General
5 State Bar No. 270842
1515 Clay Street, 20th Floor
6 P.O. Box 70550
Oakland, CA 94612-0550
7 Telephone: (510) 879-0173
Fax: (510) 622-2270
8 E-mail: Lisa.Ehrlich@doj.ca.gov
Attorneys for State of California
9

10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION
13

14 COUNTY OF SANTA CLARA,
15

Plaintiff,
16

17 v.

18 DONALD J. TRUMP, President of the United
States of America, JOHN F. KELLY, in his
19 official capacity as Secretary of the United
States Department of Homeland Security,
20 DANA J. BOENTE, in his official capacity as
Acting Attorney General of the United States,
21 MARK SANDY, in his official capacity as
Acting Director of the Office of Management
22 and Budget, and DOES 1-50,

23 Defendants.
24
25
26
27
28

CASE NO.: 17-cv-00574-WHO

**STATE OF CALIFORNIA'S AMICUS
CURIAE BRIEF IN SUPPORT OF
PLAINTIFF'S MOTION FOR
PRELIMINARY INJUNCTION**

Date: April 5, 2017
Time: 2:00 p.m.
Courtroom: 2
Judge: Honorable William H. Orrick

Trial Date: None Set

Action Filed: February 3, 2017

TABLE OF CONTENTS

	Page
Introduction and Statement of Interest of Amicus Curiae	1
Argument	2
I. The Executive Order Revives Past Federal Attempts to Compel State Participation in Immigration Enforcement.....	2
A. The Original Secure Communities Program	2
B. Recognizing State Concerns, the Federal Government Eliminates the Secure Communities Program.....	4
C. Executive Order 13768 Restores the Secure Communities Program.....	5
II. For Public Safety Reasons, California has Enacted Legislation Regarding Local Law Enforcement Discretion to Engage in Federal Immigration Enforcement	6
A. Public Safety is Best Served By Allowing State and Local Entities to Make Decisions that Build Trust With Local Communities.....	7
B. California Laws Increase Public Safety and Protect Residents’ Constitutional Rights By Retaining State and Local Discretion to Determine When and How to Assist Federal Immigration Authorities.....	9
1. The TRUST Act	9
2. The TRUTH Act	10
3. Local Policies	12
Conclusion	12

TABLE OF AUTHORITIES

Page**CASES**

<i>Alfred L. Snapp & Son, Inc. v. Puerto Rico ex rel. Barez</i> 458 U.S. 592 (1982)	7
<i>Committee for Immigrant Rights of Sonoma County, et al. v. County of Sonoma</i> No. 08-4220 (N.D. Cal.)	4
<i>Galarza v. Szalczyk</i> 745 F.3d 634 (3d Cir. 2014)	3
<i>Garcia v. Taylor</i> 40 F.3d 299 (9th Cir. 1994)	3
<i>Gonzalez v. ICE</i> Case No. 13-0441, 2014 WL 12605368 (C.D. Cal. July 28, 2014)	3
<i>Miranda-Olivares v. Clackamas Cnty.</i> Case No. 12-02317, 2014 WL 1414305 (D. Or. Apr. 11, 2014)	3
<i>Morales v. Chadbourne</i> 793 F.3d 208 (1st Cir. 2015)	3
<i>Roy v. County of Los Angeles</i> No. 12-cv-9012 (C.D. Cal.)	4
<i>Steinle v. City & Cty. of San Francisco</i> Case No. 16-cv-02859, 2017 WL 67064 (N.D. Cal. 2017)	10

STATUTES

8 United States Code	
§ 1252(i)	3
§ 1373	<i>passim</i>
§ 1373(a)	6
§ 1373(b)	6
California Business & Professions Code	
§§ 22440-22449	11

TABLE OF AUTHORITIES
(continued)

	<u>Page</u>
California Government Code	
§ 7282.....	9
§ 7282.5.....	9
§ 7282.5(a).....	9
§ 7283.....	11
§ 7283.1.....	11
§ 7283.1(a).....	11
§ 7283.1(b).....	11
§ 7283.1(c).....	11
§ 7283.1(d).....	11
§ 7283.2.....	11
California Penal Code	
§ 679.10.....	11
California Statutes	
c. 570, § 1(d).....	3, 10
c. 768.....	11
CONSTITUTIONAL PROVISIONS	
United States Constitution, Fourth Amendment.....	3, 4, 5, 9
OTHER AUTHORITIES	
8 Code of Federal Regulations	
§ 287.7.....	3
Cal. Sen. Comm. on Public Safety, “Report on AB 4” (Jul. 1, 2013).....	9
Craig E. Ferrell, Jr. et al., “M.C.C. Immigration Committee Recommendations For Enforcement of Immigration Laws by Local Policy Agencies” (June 2006).....	8
ICE, “Weekly Declined Detainer Outcome Report for Recorded Declined Detainers Jan. 28-Feb. 3, 2017” (Mar. 20, 2017).....	5
Maria Sachetti, <i>Trump administration: These police agencies didn’t help feds with deportations</i> , WASH. POST., Mar. 20, 2017.....	6
Nik Theodore, Dep’t of Urban Planning and Policy, Univ. of Ill. At Chicago, <i>Insecure Communities: Latino Perceptions of Police Involvement in Immigration Enforcement</i> (May 2013).....	7
President’s Task Force on 21st Century Policing, <i>Final Report</i> (Washington D.C. May 2015).....	8

TABLE OF AUTHORITIES
(continued)

	<u>Page</u>
Tom K. Wong, <i>The Effects of Sanctuary Policies on Crime and the Economy</i> , CTR. FOR AM. PROGRESS (Jan. 26, 2017)	8
U.S. Dep’t of Homeland Sec. Mem. From Jeh Charles Johnson, Sec’y of Homeland Sec., “Secure Communities” (Nov. 20, 2014).....	4
U.S. Dep’t of Homeland Sec. Mem. from John Kelly, Sec’y of Homeland Sec., “Enforcement of the Immigration Laws to Serve the National Interest” (Feb. 20, 2017)	5

1 **INTRODUCTION AND STATEMENT OF INTEREST OF AMICUS CURIAE**

2 The Attorney General is the State’s chief law officer and is vested with supervisorial
 3 authority over local law enforcement agencies in the State of California. The State has a strong
 4 interest in ensuring public safety and protecting the rights of its residents by maintaining an
 5 effective law enforcement system. Like many local law enforcement agencies in California and
 6 throughout the Nation, the State has concluded that public safety is best protected when all
 7 members of our community—regardless of immigration status—are encouraged to report crimes
 8 and participate in policing efforts without fear of immigration consequences. California law
 9 reflects this faith in community policing by promoting a relationship of trust and engagement
 10 between law enforcement and the people they protect, while also providing law enforcement
 11 agencies with the discretion to engage with federal immigration authorities in certain
 12 circumstances. It is in the best interest of the State to see that California statutes protecting these
 13 priorities are properly interpreted and enforced, and are not undermined by overbroad and
 14 unconstitutional federal directives.

15 Executive Order 13768, issued on January 25, 2017, is an aggressive attempt by President
 16 Trump to coerce state and local jurisdictions into participating in immigration enforcement, even
 17 in situations where that participation would undermine public safety and go against the best
 18 judgment of the law enforcement officials who are most familiar with local communities. Among
 19 other things, the Executive Order: reinstates the federal “Secure Communities” program, which
 20 enlists local authorities in detaining persons the federal government believes to be removable;
 21 directs that eligibility for federal funds will depend on whether a jurisdiction willfully refuses to
 22 comply with 8 U.S.C. 1373, a federal statute regarding the sharing of “information regarding the
 23 citizenship or immigration status” of individuals with the federal government; gives the Secretary
 24 of Homeland Security discretion to designate local jurisdictions as “sanctuary jurisdictions”;
 25 orders the Secretary to publish a weekly report of jurisdictions that decline detainer requests; and
 26 orders the United States Attorney General to take enforcement action against entities that violate
 27 Section 1373 or have statutes, policies, or practices that prevent or hinder the enforcement of
 28

1 Federal law.¹ As the State with the largest immigrant population in the country—and with a state
 2 budget that relies on over \$90 billion in federal funds annually—California’s interests would be
 3 directly affected by any decision construing this Executive Order. Although no California law
 4 conflicts with Section 1373, the Executive Order has created concern and confusion for residents
 5 and local jurisdictions within this State.

6 To assist the Court in understanding the risks and confusion created by the Executive
 7 Order, this brief will first review recent developments in federal law and policy that prompted
 8 California to adopt statutes protecting the State’s discretion to make public-safety judgments
 9 about when and how to assist federal authorities in carrying out their responsibilities to enforce
 10 federal immigration laws. Those developments include the introduction of the original Secure
 11 Communities program, widespread concerns about the constitutionality of that program, the
 12 federal government’s decision to terminate the program in light of those concerns, and President
 13 Trump’s decision to revive the program. Next, the brief will describe the two statutes that
 14 California adopted—the TRUST Act and the TRUTH Act—to protect public safety and resident’s
 15 constitutional rights, and the potential ramifications of the Executive Order for those state laws.

16 **ARGUMENT**

17 **I. THE EXECUTIVE ORDER REVIVES PAST FEDERAL ATTEMPTS TO COMPEL STATE** 18 **PARTICIPATION IN IMMIGRATION ENFORCEMENT**

19 **A. The Original Secure Communities Program**

20 In 2008, the Department of Homeland Security (DHS) launched the Secure Communities
 21 program, which enlisted local law enforcement agencies to engage in federal immigration
 22 enforcement. First, when state or local law enforcement authorities submitted fingerprints of a
 23 person booked for arrest to the FBI, the FBI shared those fingerprints with Immigration and
 24 Customs Enforcement (ICE), which used them to determine if the person was subject to
 25 removal.² Second, if ICE thought the person was removable, it could ask local agencies to detain

26 ¹ Exec. Order No. 13768, 82 Fed. Reg. 8799, §§ 9, 10 (Jan. 25, 2017).

27 ² U.S. Immigration and Customs Enforcement, “Secure Communities – Overview,”
 28 <https://www.ice.gov/secure-communities>.

1 the person—without any federal reimbursement—beyond the time when they would normally be
 2 released. The program authorized ICE to issue a “detainer” request to state or local law
 3 enforcement, asking the local agency to hold the person for an additional 48 hours to allow time
 4 for ICE to interview the person or take them into custody.³ As the California Legislature later
 5 determined, Secure Communities raised serious Fourth Amendment concerns and undermined
 6 California’s community policing efforts. *See* 2013 Cal. Stat., Ch. 570, § 1(d); *infra* p. 9.

7 Despite language in the standard ICE detainer form suggesting that state and local agencies
 8 were “require[d]” to hold individuals that were the subject of an ICE detainer request, federal
 9 courts held that the requests were voluntary in nature.⁴ For example, the Third Circuit concluded
 10 that “immigration detainers do not and cannot compel a state or local law enforcement agency to
 11 detain suspected aliens subject to removal” and that local law enforcement agencies are “free to
 12 disregard the ICE detainer.” *Galarza v. Szalczyk*, 745 F.3d 634, 636, 645 (3rd Cir. 2014); *see*
 13 *also Miranda-Olivares v. Clackamas Cnty.*, Case No. 12-02317, 2014 WL 1414305 (D. Or. Apr.
 14 11, 2014) (same); *cf. Garcia v. Taylor*, 40 F.3d 299, 303-04 (9th Cir. 1994), *superseded on other*
 15 *grounds by* 8 U.S.C. § 1252(i) (in habeas context, detainers do not allow, much less compel, law
 16 enforcement agencies to hold someone past end of term).

17 Federal courts also held that prolonged detentions by local authorities pursuant to ICE
 18 detainer requests violated the Fourth Amendment unless they were independently supported by
 19 probable cause. *See, e.g., Morales v. Chadbourne*, 793 F.3d 208, 217-18 (1st Cir. 2015)
 20 (detention solely on ICE detainer constituted a new seizure for Fourth Amendment purposes that
 21 “must be supported by a new probable cause justification”); *Miranda-Olivares*, 2014 WL
 22 1414305, at *11 (hold pursuant to a detainer a new seizure and “ICE detainer alone did not
 23 demonstrate probable cause.”); *Gonzalez v. ICE*, Case No. 13-0441, 2014 WL 12605368, at *12-

24 ³ *Id.* at “How does Secure Communities Work?”

25 ⁴ The original detainer form used under the Secure Communities program stated: “It is requested
 26 that you: Please accept this notice as a detainer. This is for notification purposes only.... Federal
 27 regulations (8 CFR 287.7) require that you detain the alien for a period not to exceed 48 hours (excluding
 28 Saturdays, Sundays and Federal holidays) to provide adequate time for ICE to assume custody of the
 alien.” *Galarza v. Szalczyk*, 745 F.3d 634, 637 (3d Cir. 2014) (quoting form).

13 (C.D. Cal. July 28, 2014) (plaintiffs “sufficiently pleaded that Defendants exceeded their authorized power” by issuing “immigration detainers without probable cause”).

The Secure Communities program caused direct harm within the State of California. Residents who had been held pursuant to ICE detainer requests sued to vindicate their constitutional rights. Several of our local governments paid settlements to such plaintiffs out of state and local tax revenues.⁵ Concerns arising from these incidents informed the California Legislature’s adoption of the TRUST Act, which aimed to retain an appropriate amount of state and local discretion in determining whether considerations of public safety weigh in favor of cooperating with federal immigration enforcement. *See infra*, p. 9.

B. Recognizing State Concerns, the Federal Government Eliminates the Secure Communities Program

In 2014, DHS announced that the Secure Communities program would be discontinued, acknowledging an “increasing number of federal court decisions that hold that detainer-based detention by state and local law enforcement agencies violates the Fourth Amendment.”⁶ Then-Secretary Jeh Johnson also recognized that Secure Communities engendered “general hostility toward the enforcement of our immigration laws” from law enforcement throughout the country.⁷ He directed ICE to create a new program entitled “Priority Enforcement Program” (PEP) to replace Secure Communities. The new program would still rely on fingerprint-based biometric data submitted by state and local law enforcement to the FBI. But due to the Fourth Amendment concerns surrounding the original detainer requests, the Secretary replaced them with “requests for notification (*i.e.*, requests that state or local law enforcement notify ICE of a pending release

⁵ For example, Los Angeles paid a settlement of \$255,000 in *Roy v. County of Los Angeles*, No. 12-cv-9012 (C.D. Cal.). Notice of Meeting, County of Los Angeles Claims Board (Nov. 16, 2015) (recommended settlement of \$255k to County Board for detaining individual for 89 days pursuant to ICE hold), http://file.lacounty.gov/SDSInter/lac/1016994_111615.pdf. *See also* Settlement Agreement at 2-5, *Committee for Immigrant Rights of Sonoma County, et al. v. County of Sonoma*, No. 08-4220 (N.D. Cal.) (\$8k settlement after unlawful detainer), https://www.aclunc.org/sites/default/files/asset_upload_file403_9271.pdf.

⁶ U.S. Dep’t of Homeland Sec. Mem. From Jeh Charles Johnson, Sec’y of Homeland Sec., “Secure Communities,” at 2 (Nov. 20, 2014), https://www.dhs.gov/sites/default/files/publications/14_1120_memo_secure_communities.pdf.

⁷ *Id.* at 1.

during the time that person is otherwise in custody under state or local authority).⁸ Requests for detention were only to be used in special circumstances where consistent with the requirements of the Fourth Amendment.⁹ Local and state law enforcement, however, remained the agencies at risk of liability from any Fourth Amendment violations arising out of detention pursuant to a detainer request.

C. Executive Order 13768 Restores the Secure Communities Program

On January 25, 2017, without addressing any of the concerns that DHS had previously raised about Secure Communities, the President directed DHS to terminate PEP and re-institute the Secure Communities program. Exec. Order, § 10(a). In his memorandum implementing the Executive Order, DHS Secretary Kelly ordered that “[e]ffective immediately, [PEP] is terminated and the Secure Communities Program shall be restored.”¹⁰ He also announced that DHS would provide new updated forms for communication with local law enforcement.¹¹ He did not, however, specify how these forms would differ from the detainer requests issued during the original Secure Communities program, or what DHS would do to ensure that future detainer requests would comply with constitutional standards. Just this week, ICE released its first weekly list of jurisdictions that declined detainer requests. In this initial report, ICE admitted that “it does not document, in a systematically reportable manner, the immigration status of an alien at the time of detainer issuance.”¹² If ICE cannot provide documentation to local law enforcement of an individual’s immigration status when it issues a detainer, it is unclear how it can provide the independent probable cause necessary under the Fourth Amendment for state and local law enforcement agencies to constitutionally detain individuals based only on that detainer.

⁸ *Id.* at 2 (emphasis in original).

⁹ *Id.*

¹⁰ U.S. Dep’t of Homeland Sec. Mem. from John Kelly, Sec’y of Homeland Sec., “Enforcement of the Immigration Laws to Serve the National Interest,” at 3 (Feb. 20, 2017), https://www.dhs.gov/sites/default/files/publications/17_0220_S1_Enforcement-of-the-Immigration-Laws-to-Serve-the-National-Interest.pdf.

¹¹ *Id.* In the interim, ICE may continue to use the current forms. *Id.*

¹² ICE, “Weekly Declined Detainer Outcome Report for Recorded Declined Detainers Jan. 28-Feb. 3, 2017,” at 34 (Mar. 20, 2017), https://www.ice.gov/doclib/ddor/ddor2017_01-28to02-03.pdf.

In addition to reviving the Secure Communities program, the Executive Order states that eligibility for federal funds will depend upon whether a jurisdiction “willfully refuse[s] to comply with 8 U.S.C. 1373 (sanctuary jurisdictions),” and orders the United States Attorney General to take enforcement actions against “any entity that violates 8 U.S.C. 1373, or which has in effect a statute, policy, or practice that prevents or hinders the enforcement of Federal law.”¹³ By its terms, Section 1373 only prohibits state or local governments from “prohibit[ing], or in any way restrict[ing], any government entity or official from sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual,” or from prohibiting the maintenance or exchange of information regarding the immigration status of any individual. 8 U.S.C. § 1373(a)-(b). But the Executive Order’s invocation of Section 1373, its threat to withdraw federal funding streams, and its requirement to publish weekly declined detainer reports, has sown confusion about the requirements of federal law, and appears to be intended to intimidate state and local jurisdictions into abandoning policies and laws that they have determined are necessary to enhance public safety in their communities and do not violate federal law. In fact, following ICE’s first declined detainer report, when asked about the Executive Order’s threats to withdraw funding from an official list of sanctuary jurisdictions, it was reported that ICE officials expressed “hope[] such jurisdictions would start cooperating with federal agents instead.”¹⁴ The State has an interest in protecting local and state law enforcement agencies from such federal intimidation.

II. FOR PUBLIC SAFETY REASONS, CALIFORNIA HAS ENACTED LEGISLATION REGARDING LOCAL LAW ENFORCEMENT DISCRETION TO ENGAGE IN FEDERAL IMMIGRATION ENFORCEMENT

States have an interest in “the exercise of sovereign power over individuals and entities within . . . [their] jurisdiction” that includes “the power to create and enforce a legal code, both

¹³ Exec. Order 13,768, 82 Fed. Reg. 8799, §§ 9, 10 (Jan. 25, 2017).

¹⁴ Maria Sachetti, *Trump administration: These police agencies didn’t help feds with deportations*, WASH. POST., Mar. 20, 2017, available at https://www.washingtonpost.com/local/social-issues/trump-administration-these-police-agencies-didnt-help-feds-with-deportations/2017/03/20/67b3767a-0d76-11e7-9b0d-d27c98455440_story.html?hpid=hp_hp-more-top-stories_detainers-105pm%3Ahomepage%2Fstory&utm_term=.3da6fe60b54a.

civil and criminal.” *Alfred L. Snapp & Son, Inc. v. Puerto Rico ex rel. Barez*, 458 U.S. 592, 601 (1982). Moreover, the States have an independent interest in the “well-being of [their] populace.” *Id.* at 602. As an exercise of this sovereign right to protect the health, welfare, and safety of its residents, California has adopted statutes that facilitate public safety by increasing trust between law enforcement agencies and the communities they protect. These important statutes are consistent with federal law, and the State has a strong interest in ensuring that they are not misconstrued or undermined by the Executive Order and the federal government’s attempts to coerce compliance.

A. Public Safety Is Best Served by Allowing State and Local Entities to Make Decisions That Build Trust with Local Communities

The safety of a community increases when all residents—regardless of immigration status—feel comfortable reporting crimes and interacting with local police without fear of immigration consequences. In contrast, when local law enforcement agencies take an active role in enforcing federal immigration laws with no view to balancing immigration enforcement against local public safety priorities, and when law enforcement officials are perceived as arms or agents of federal immigration authorities in all situations, it can undermine the trust between law enforcement and the community. Indeed, recent data suggest that many undocumented immigrants are already fearful to seek the assistance of or make reports to local law enforcement. For example, one study of Latinos in four major cities found that 70% of undocumented immigrants and 44% of all Latinos are less likely to contact law enforcement if they are victims of a crime for fear that the police will ask them or people they know about their immigration status.¹⁵ Similarly, 67% of undocumented immigrants and 45% of all Latinos are less likely to voluntarily offer information about, or report, crimes because of the same fear.¹⁶ This fear endangers public safety for everyone—including non-immigrant residents.

¹⁵ Nik Theodore, Dep’t of Urban Planning and Policy, Univ. of Ill. At Chicago, *Insecure Communities: Latino Perceptions of Police Involvement in Immigration Enforcement* 5 (May 2013), http://www.policylink.org/site/default/files/INSECURE_Communities_Report_Final.PDF.

¹⁶ *Id.* at 5-6.

California is not the only jurisdiction that has come to this conclusion. The Major Cities Chiefs Association (MCCA), which represents the 68 largest law enforcement agencies in the United States, has voiced similar concerns about local and state agencies enforcing federal immigration law indiscriminately because it “undermines the trust and cooperation with immigrant communities.”¹⁷ When undocumented immigrants’ “primary concern is that they will be deported or subjected to an immigration status investigation, then they will not come forward and provide needed assistance and cooperation.”¹⁸ Commingling local law enforcement with federal immigration enforcement “result[s] in increased crime against immigrants and in the broader community, creat[ing] a class of silent victims and eliminat[ing] the potential for assistance from immigrants in solving crimes or preventing future terroristic acts.”¹⁹

The federal government’s own 21st Century Policing Task Force came to the same conclusion. In order to “build relationships based on trust with immigrant communities,” it recommended “[d]ecoupl[ing] federal immigration enforcement from routine local policing for civil enforcement and nonserious crime.”²⁰ It also recommended that DHS “should terminate the use of the state and local criminal justice system, including through detention, notification, and transfer requests, to enforce civil immigration laws against civil and non-serious criminal offenders.”²¹ These conclusions are supported by data from a recent study, which shows that crime is statistically significantly lower in counties that do not assist federal immigration enforcement officials by holding people beyond their release date on the basis of immigration detainers, when compared to counties that comply with immigration detainer requests.²²

¹⁷ Major Cities Chiefs Association, “Immigration Position” (Oct. 2011), https://majorcitieschiefs.com/pdf/news/immigration_position112811.pdf.

¹⁸ Craig E. Ferrell, Jr. et al., “M.C.C. Immigration Committee Recommendations For Enforcement of Immigration Laws by Local Policy Agencies,” at 6 (June 2006), https://www.majorcitieschiefs.com/pdf/news/MCC_Position_Statement.pdf.

¹⁹ *Id.*

²⁰ President’s Task Force on 21st Century Policing, *Final Report* 18 (Washington D.C. May 2015), http://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf.

²¹ *Id.*

²² Tom K. Wong, *The Effects of Sanctuary Policies on Crime and the Economy*, CTR. FOR AM. PROGRESS (Jan. 26, 2017),

1 Recognizing state and local discretion to determine when and how to assist with federal
 2 immigration efforts based on local public safety concerns thus increases public safety for all state
 3 residents.

4 **B. California Laws Increase Public Safety and Protect Residents’**
 5 **Constitutional Rights by Retaining State and Local Discretion to**
 6 **Determine When and How to Assist Federal Immigration Authorities**

7 **1. The TRUST Act**

8 Many local jurisdictions objected to Secure Communities in its initial incarnation because
 9 of its impact on the relationship between communities and local law enforcement and the Fourth
 10 Amendment problems it created.²³ In 2013, as a response to these growing concerns and to
 11 protect the public safety of its residents, California enacted the Transparency and Responsibility
 12 Using State Tools Act (TRUST Act), Government Code sections 7282 and 7282.5. The TRUST
 13 Act limits the situations in which local law enforcement agencies may comply with ICE detainer
 14 requests to those situations where, in the State’s considered judgment, public safety weighs in
 15 favor of assistance to federal immigration authorities. If a law enforcement agency wishes to
 16 comply with a voluntary ICE detainer request, the TRUST Act requires two conditions be met.
 17 First, the continued detention cannot violate any federal, state, or local law, or any local policy.
 18 Cal. Gov’t Code § 7282.5(a). Importantly, this includes the protections afforded by the Fourth
 19 Amendment. Second, the individual must have been convicted of certain specific crimes or meet
 20 other specific criminal criteria.²⁴ Only if both conditions are met may local law enforcement
 21 detain an individual for up to 48 hours beyond their release date to permit ICE to assume custody
 22 of the individual.

23 (...continued)

24 [https://www.americanprogress.org/issues/immigration/reports/2017/01/26/297366/the-effectsofsanctuary-](https://www.americanprogress.org/issues/immigration/reports/2017/01/26/297366/the-effectsofsanctuary-policies-on-crime-and-the-economy/)
 25 [policies-on-crime-and-the-economy/](https://www.americanprogress.org/issues/immigration/reports/2017/01/26/297366/the-effectsofsanctuary-policies-on-crime-and-the-economy/).

26 ²³ Cal. Sen. Comm. on Public Safety, “Report on AB 4,” at 8-9 (Jul. 1, 2013),
 27 https://leginfo.legislature.gov/faces/billAnalysisClient.xhtml?bill_id=201320140AB4 (collecting local
 28 concerns and citing then-San Francisco Sheriff Hennessey expressing dismay at Secure Communities and
 stating, “There should be no penalty for a victim of a crime to call the police.”).

²⁴ The statute sets out seven criteria, including if the “individual has been convicted of a felony
 punishable by imprisonment in a state prison” or “has been convicted within the past five years of a
 misdemeanor that is punishable as either a misdemeanor or a felony.” Cal. Gov’t Code § 7282.5(a).

1 In passing the law, the Legislature explicitly found that “[t]he Secure Communities
 2 program and immigration detainers harm community policing efforts because immigrant residents
 3 who are victims of or witnesses to crime, including domestic violence, are less likely to report
 4 crime or cooperate with law enforcement when any contact with law enforcement could result in
 5 deportation.” 2013 Cal. Stat., Ch. 570, § 1(d). Moreover, based on experience, the State found
 6 that “[t]he program can result in a person being held and transferred into immigration detention
 7 without regard to whether the arrest is the result of a mistake, or merely a routine practice of
 8 questioning individuals involved in a dispute without pressing charges. Victims or witnesses to
 9 crimes may otherwise have recourse to lawful status (such as U-visas or T-visas) that detention
 10 resulting from the Secure Communities program obstructs.” *Id.*

11 Importantly, the TRUST Act only limits a law enforcement agency’s discretion to *detain*
 12 individuals. The Act does not prohibit compliance with Section 1373, which applies only to
 13 sharing “information regarding the *citizenship or immigration status*” of individuals with the
 14 federal government. 8 U.S.C. § 1373 (emphasis added); *see Steinle v. City & Cty. of San*
 15 *Francisco*, --- F. Supp. 3d ---, 2017 WL 67064, *12 (N.D. Cal. 2017) (“The statute, by its terms,
 16 governs only ‘information regarding the citizenship or immigration status, lawful or unlawful, of
 17 any individual.’”). There is no conflict between these two statutes, and following the TRUST Act
 18 does not cause any agency to violate Section 1373. Nor does following the TRUST Act cause
 19 any agency to “prevent[] or hinder[] the enforcement of Federal law.” To the extent the State can
 20 determine what is meant by that broad phrase, the requirements of the TRUST Act are in
 21 compliance with federal immigration laws and regulations, and do not interfere with the federal
 22 government’s ability to use federal resources to enforce federal immigration law. Nevertheless,
 23 the reinstitution of Secure Communities and a renewed federal focus on detainer requests raise
 24 the same serious concerns about public safety and constitutional violations that originally
 25 prompted enactment of the TRUST Act.

26 **2. The TRUTH Act**

27 More recently, California added to its policy of enhancing trust between immigrant
 28 communities and local law enforcement by enacting the Transparent Review of Unjust Transfers

1 and Holds (TRUTH) Act, Government Code sections 7283, 7283.1, and 7283.2. The TRUTH
 2 Act provides individuals who are in the custody of local law enforcement agencies with
 3 information about their legal and procedural rights should ICE agents wish to talk to them.
 4 Specifically, the Act requires that before an interview between ICE and an individual in custody
 5 regarding civil immigration violations, local law enforcement agencies must provide the
 6 individual a written consent form that explains the purpose of the interview, that it is voluntary,
 7 and that the individual may decline to be interviewed or have his or her attorney present if
 8 interviewed. Cal. Gov't Code § 7283.1(a). Moreover, local law enforcement agencies must
 9 provide copies of specified documentation received from ICE to the individual, and notify the
 10 individual regarding the agency's intent to comply with the ICE request. *Id.* § 7283.1(b). The
 11 TRUTH Act also increases transparency around local cooperation with federal authorities by
 12 making records relating to ICE access subject to disclosure under the California Public Records
 13 Act. *See id.* § 7283.1(c)-(d). The legislature made this purpose clear: "This bill seeks to address
 14 the lack of transparency and accountability by ensuring that all ICE deportation programs that
 15 depend on entanglement with local law enforcement agencies in California are subject to
 16 meaningful public oversight." 2016 Cal. Stat., c. 768 (A.B. 2792) § 1(h)-(i). The TRUTH Act
 17 reflects a renewed commitment by the State to the policy that public safety and the public interest
 18 are best served by preserving state and local discretion to determine an appropriate level of
 19 engagement between local law enforcement and federal immigration authorities based on local
 20 public safety and policy concerns.²⁵

21 Like the TRUST Act, the TRUTH Act does not prohibit compliance with 8 U.S.C. § 1373.
 22 It does not prohibit or limit the exchange of immigration or citizenship information with the
 23 federal government. Rather, the TRUTH Act provides procedural and legal protections to
 24

25 ²⁵ California has also enacted other laws that strengthen community policing efforts. For example,
 26 the Immigrant Victims of Crime Equity Act, Cal. Penal Code § 679.10, ensures that all immigrant crime
 27 victims in California have equal access to an important form of immigration relief called the U
 28 nonimmigrant Visa (U Visa). Additionally, the Immigration Consultants Act (ICA), Cal. Bus. & Prof.
 Code §§ 22440-22449, delineates consumer rights to which immigrants seeking immigration services are
 entitled under California law, and provides a legal recourse for victims of immigration services fraud.

1 California residents in local custody with respect to their interactions with ICE. The State has a
2 clear interest in seeing that the policies and protections in its laws continue to benefit its residents,
3 and are not undermined by the federal government's actions to coerce compliance from state and
4 local law enforcement.

5 **3. Local Policies**

6 In response to the same public safety concerns that motivated California to adopt the
7 TRUST Act and the TRUTH Act, many local jurisdictions in our State have moved to increase
8 trust between law enforcement and residents by embracing policies that allow local law
9 enforcement to determine the appropriate level of engagement with the enforcement of federal
10 immigration law based on local judgments about public safety. Of the 58 counties in California,
11 54 have some type of policy that limits local participation in immigration enforcement to those
12 situations in which local agencies have determined that such participation will increase rather
13 than decrease public safety.²⁶ Thus, both the State and local jurisdictions have arrived at the
14 conclusion that public safety is best served by maintaining state and local discretion to determine
15 whether, and to what extent, local law enforcement agencies should assist in the enforcement of
16 federal immigration policy.

17 **CONCLUSION**

18 California has a sovereign right and responsibility to protect the safety and the
19 constitutional rights of its residents, including by adopting laws and policies that place
20 appropriate limits on the ability of the federal government to use state and local resources for the
21 enforcement of federal immigration policy. President Trump's ambitions to compel state and
22 local authorities to enforce federal immigration policy are subject to—and constrained by—
23 federal statutory and constitutional law. California authorities are entitled to promote their own
24 laws and policies to protect public safety through legislation such as the TRUST and TRUTH
25 Acts, which does not conflict with federal law.

26
27 ²⁶ County policies collected online can be found at the California Trust Act website,
28 <http://www.catrustact.org/countycity-policies.html>.

Dated: March 22, 2017

Respectfully Submitted,

XAVIER BECERRA
Attorney General of California
ANGELA SIERRA
Senior Assistant Attorney General
SATOSHI YANAI
Supervising Deputy Attorney General

/s/Lisa C. Ehrlich

LISA C. EHRLICH
Deputy Attorney General
Attorneys for State of California